APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[September 23, 2003]

No. 03-1622
MISC-03-8

GOODYEAR TIRE & RUBBER COMPANY, INCORPORATED
Plaintiff-Appellant

v.

FREDERIC V. MALEK
Defendant-Appellee

ROWAN & BLEWITT, INCORPORATED
Movant

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel comprised of Judge Widener, Judge Traxler, and Judge Hamilton.

For the Court,

/s/ Patricia S. Connor
CLERK

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[August 6, 2003]

No. 03-1622
MISC-03-8

GOODYEAR TIRE & RUBBER COMPANY, INCORPORATED,
Plaintiff-Appellant,

versus

FREDERIC V. MALEK,
Defendant-Appellee,

ROWAN & BLEWITT, INCORPORATED,
Movant.

ORDER

Defendant/Appellee Frederick V. Malek moves to dismiss Appellant Goodyear Tire & Rubber Company's ("Goodyear") appeal from the magistrate judge's order denying Goodyear's motion to quash a subpoena issued in the United States District Court for the Eastern District of Virginia pertaining to an action pending in federal district court in Colorado. Under Rule 72(a) of the Federal Rules of Civil Procedure, a party has ten days to file objections to the magistrate judge's pretrial order concerning a nondispositive matter. "[A] party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made." Fed. R. Civ. P. 72(a). It is undisputed that Goodyear failed to file objections in the district court concerning, or appeal to the district court from, the magistrate judge's order. Accordingly,

Goodyear waived its right to challenge the magistrate judge's order on appeal. *Id.*

Accordingly, we grant Malek's motion to dismiss the appeal.

Entered at the direction of Judge Widener with the concurrence of Judge Traxler and Senior Judge Hamilton.

For the Court,

/s/ Patricia S. Connor
CLERK

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[May 29, 2003]

Civil Action No. 03-MC-8

THE GOODYEAR TIRE & RUBBER CO.,
Plaintiff,

v.

FREDERIC V. MALEK,
Defendant.

ORDER

Before the Court, without the necessity of oral argument, are the following motions 1) Plaintiff, Goodyear Tire & Rubber Co's Motion to Have the Documents Submitted *In Camera* Remain Under Seal and to Stay the Deposition of Rowan & Blewitt Pending Defendant's Appeal, 2) Defendants', "Homeowners" Motion to Strike Goodyear's Motion Filed May 23, 2003 and in the Alternative, Defendants' Supplemental Response.

Upon consideration of all the submissions, it is

ORDERED,

Plaintiff's Motion to Have the Documents Submitted *In Camera* Remain Under Seal and to Stay the Deposition of Rowan & Blewitt Pending Defendant's Appeal is GRANTED, and Defendants' Motion to Strike Goodyear's Motion filed May 23, 2003 is DENIED.

The Court has granted this stay for two reasons. First, the trial of this matter is apparently scheduled for April, 2004 in the Federal District Court in Colorado. This Court finds that the Homeowners will not suffer substantial harm by what may be, for the reason explained below, a very brief stay of the April 30, 2003 order of this Court.

Secondly, Goodyear has not addressed the issue of a direct appeal of a nondispositive motion to the Court of Appeals. The Homeowners raise the issue to the extent of arguing that the Fourth Circuit is among the majority of the courts of appeal that decline to exercise jurisdiction under the collateral order doctrine from discovery orders.

Both parties fail to note that a party may not appeal directly to the Court of Appeals from a magistrate judges non-dispositive pretrial order. *See, e.g., Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1173-74 (9th Cir. 1996) (if party does not object to district court, and if district court does not therefore hear the issue, finding of magistrate judge under Rule 72(a) cannot be appealed to circuit court).

While this Court believes the appeal to the Fourth Circuit is thus procedurally defective and that the stay granted herein will thereby be necessarily short lived, the magistrate judge respectfully defers to the Court of Appeals to rule on this jurisdictional issue.

For the reasons set forth herein the Order of April 30, 2003 is STAYED until further order of this court.

Entered this 29th day of May, 2003.

/s/ Barry R. Poretz
Barry R. Poretz
United States Magistrate Judge

Alexandria, Virginia

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[April 30, 2003]

Civil Action No. 03-MC-8

THE GOODYEAR TIRE & RUBBER CO.,
Plaintiff,

v.

FREDERIC V. MALEK,
Defendant.

ORDER

Before the Court is the Motion of Goodyear Tire & Rubber Company to Quash the Subpoena of Rowan & Blewitt, Inc., the Opposition of the Malek Homeowners thereto, and Goodyear's Reply to the Opposition.

Having taken this matter under advisement, the Court has received Goodyear's Privilege Log, and the Malek Homeowner's Objections thereto. The Court has additionally carefully reviewed the documents submitted for *in camera* review as referenced in the privilege log.

Upon a review of all the submissions and for the reasons set forth in the Malek Oppositions, which the Court adopts as it's own, it is

ORDERED,

Defendant's Motion to Quash the Subpoena of Rowan & Blewitt, Inc. is DENIED. The Court specifically and fully

sustains the objections of the Malek Homeowners to Goodyear's privilege log and requires Rowan & Blewitt to produce the requested documents and witness for deposition.

It is further ORDERED,

The Motion for Joinder of Rowan & Blewitt, Inc. is GRANTED.

As this is a miscellaneous action filed in this Court, and is a proceeding ancillary to the lawsuit filed in the United States District Court for the District of Colorado, the Clerk of this Court is DIRECTED to place UNDER SEAL the documents submitted for *in camera* review until further order of this Court.

Entered this 30th day of April, 2003.

/s/ Barry R. Poretz
Barry R. Poretz
United States Magistrate Judge

Alexandria, Virginia

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[Nov. 15, 2002]

Civil Action No. 02-MC-51

STEPHEN PAYNE, *et al.*,
Plaintiffs,

v.

GOODYEAR TIRE & RUBBER CO.,
Defendant.

ORDER

Before the Court, having been taken under advisement, are Defendant's Motion for an Emergency Protective Order and Defendant's Motion to Quash the Subpoenas of David Bartlett and Rowan & Blewitt, Inc. At the motions hearing on October 11, 2002, the Court ordered the parties to submit briefs in support of their respective positions. The Court has received and reviewed the parties' briefs, and adopts Defendant's argument in favor of quashing the above Subpoenas. For the reasons set forth in Defendant's Brief, it is hereby

ORDERED,

Defendant's Motion to Quash the Subpoenas of David Bartlett and Rowan & Blewitt is GRANTED, and necessarily,

Defendant's Motion for an Emergency Protective Order is likewise GRANTED:

/s/ Barry R. Poretz
Barry R. Poretz
United States Magistrate Judge

November 15, 2002
Alexandria, Virginia

APPENDIX F

CONSTITUTION OF THE
UNITED STATES OF AMERICA

ARTICLE III. JUDICIAL POWER

Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CODE

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART I. ORGANIZATION OF COURTS
CHAPTER 5. DISTRICT COURTS

§ 132. Creation and composition of district courts

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

June 25, 1948, ch 646, § 1, 62 Stat. 895; Nov. 13, 1963, P.L. 88-176, § 2, 77 Stat. 331.

* * * * *

§ 137. Division of business among district judges

The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the district judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

June 25, 1948, ch 646, § 1, 62 Stat. 897.

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART III. COURT OFFICERS AND EMPLOYEES
CHAPTER 43. UNITED STATES MAGISTRATES

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon

which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

(2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case,

upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrates [magistrate judge's] shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary —

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such

jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates [magistrate judges] shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

(5) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) *Contempt authority.*

(1) *In general.* United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2) *Summary criminal contempt authority.* A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3) *Additional criminal contempt authority in civil consent and misdemeanor cases.* In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4) *Civil contempt authority in civil consent and misdemeanor cases.* In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the author-

ity of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) *Criminal contempt penalties.* The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) *Certification of other contempts to the district court.* Upon the commission of any such act—

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where—

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt, the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into

question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a dis trict judge.

(7) *Appeals of magistrate judge contempt orders.* The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification re-

quired by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate , shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 631.

June 25, 1948, ch 646, § 1, 62 Stat. 917; Oct. 17, 1968, P.L. 90-578, Title I, § 101, 82 Stat. 1112; March 1, 1972, P.L. 92-239, §§ 1, 2, 86 Stat. 47; Oct. 21, 1976, P.L. 94-577, § 1, 90 Stat. 2729; Oct. 28, 1977, P.L. 95-144, § 2, 91 Stat. 1220; Oct. 10, 1979, P.L. 96-82, § 2, 93 Stat. 643; Oct. 12, 1984, P.L. 98-473, Title II, Ch I, § 208, 98 Stat. 1986; Nov. 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(29)(B), 98 Stat. 3359; Nov. 14, 1986, P.L. 99-651, Title II, § 201(a)(2), 100 Stat.

3647; Nov. 15, 1988, P.L. 100-659, § 4(c), 102 Stat. 3918; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle H, § 7322, 102 Stat. 4467; Nov. 19, 1988, P.L. 100-702, Title IV, § 404(b)(1), Title X, § 1014, 102 Stat. 4651, 4669 Dec. 1, 1990, P.L. 101-650, Title III, § 308(a), 104 Stat. 5112; Oct. 19, 1996, P.L. 104-317, Title II, §§ 201, 202(b), 207, 110 Stat. 3848, 3849, 3850; Nov. 13, 2000, P.L. 106-518, §§ 202, 203(b), 114 Stat. 2412, 2414; Nov. 2, 2002, P.L. 107-273, Div. B, Title III, § 3002(b), 116 Stat. 1805.

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV. JURISDICTION AND VENUE
CHAPTER 99. GENERAL PROVISIONS

§ 1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

Added April 2, 1982, P.L. 97-164, Title III, Part A, § 301(a), 96 Stat. 55.

FEDERAL RULES OF CIVIL PROCEDURE

IX. SPECIAL PROCEEDINGS

Rule 72. Magistrate Judges; Pretrial Orders

(a) *Nondispositive Matters.* A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

(b) *Dispositive Motions and Prisoner Petitions.* A magistrate judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate judge, and a record may be made of such other proceedings as the magistrate judge deems necessary. The magistrate judge shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and

file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Added Apr. 28, 1983, eff. Aug. 1, 1983; amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993.
FEDERAL RULES OF CIVIL PROCEDURE

Rule 73. Magistrate Judges; Trial by Consent and Appeal

(a) *Powers; Procedure.* When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S.C. § 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. § 636(c)(5).

(b) *Consent.* When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If, within the period specified by local rule, the parties agree to a magistrate judge's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

A district judge, magistrate judge, or other court official may again advise the parties of the availability of the magistrate

judge, but, in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. A district judge or magistrate judge shall not be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge.

The district judge, for good cause shown on the judge's own initiative, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under this subdivision.

(c) Appeal. In accordance with Title 28, U.S.C. §636(c)(3), appeal from a judgment entered upon direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

(d) [Abrogated]

Added Apr. 28, 1983, eff. Aug. 1, 1983; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.